

RESPONDENT'S APPENDIX.

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In the  
**United States Court of Appeals**  
For the Ninth Circuit

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No. 15417.

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WALDEMAR J. GEREND,  
*Petitioner,*  
*vs.*

RAILROAD RETIREMENT BOARD,  
*Respondent.*

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**REVIEW OF DECISION OF RESPONDENT  
RAILROAD RETIREMENT BOARD.**

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(R. 91-93)

**Mr. Paul Shoup's Letter of June 8, 1938.**

New York, June 8, 1938.

Mr. A. D. McDonald,  
President,  
San Francisco.

Dear Mr. McDonald:

You will remember that in 1927 and 1928 there was a strong sentiment among officers and employes of corporations that they be permitted to become stockholders, many different plans being made effective. Some of these, as in the case of the Standard Oil, provided for the purchase of stock, the company I believe providing  $\frac{1}{3}$  or  $\frac{1}{2}$  of the purchase price. In others, as in the case of the Tide Water Associated Oil, option was given the officers and employes to purchase certain amounts of stock at fixed prices below the then market, the company carrying the stock until paid for. There were a great many different plans in effect, nearly all of which I think have been abandoned.

A similar sentiment developed among the officers and employes of the Southern Pacific. The opinion was united in its management that the company should not engage in any purchasing plan involving donation from its own funds. It did agree to make purchase for account of employes, as you know, and carry them under certain regulations; but because of this sentiment an organization was started among the officers of the Pacific Lines to purchase stock—primarily Southern Pacific—as a group operation.

Mr. W. J. Gerend, a general office clerk of experience, integrity and capacity for handling this work, was offered the position of Secretary and Manager of the operations of the fund under the direction of a Board of Directors

and an Executive Committee, with myself as President. It was understood that the venture was more or less experimental, and that Mr. Gerend would be retained on the payroll of the Southern Pacific Company at modest pay, with such privileges as might go with a continuance of employe relationship as related to transportation, possible pension if he returned to the service, and so on.

He was, therefore, during my stay in San Francisco after his appointment on January 1, 1929, carried on the Executive Office payroll as my secretary at \$25 per month. This was the Company's contribution to the enterprise. After my transfer to New York, the arrangement was continued.

The affairs of this organization were wound up something more than a year ago, and all assets finally distributed, the Southern Pacific stock being disposed of as a liquidation dividend, along with the Anglo National Corporation stock; the rest of the dividends I believe being in cash.

There was then no immediate opportunity for Mr. Gerend to return on any satisfactory basis to the Southern Pacific service.

From the beginning, in order to minimize the expense of carrying on the affairs of the organization, and because it fitted well into my own affairs, I arranged to have Mr. Gerend take care of all personal business matters on the Coast for me. He has been continued on the Southern Pacific payroll at \$25 per month pending determination as to his future work.

With my retirement from the service, I have found no opportunity under which I could recommend his continuance on the Southern Pacific roll. This leaves him in the position of depending upon employment I can give him for a livelihood. This, of course, was not at all the outlook

presented at the time he left the railroad service as his main activity to undertake the other work.

Mr. Gerend appreciates that in these difficult times there is probably no opening of a satisfactory nature in the Company's service, but he does want to retain such relationship with the Company as will give him best consideration for such a place whenever opportunity occurs. The circumstances, in my judgment, fully sustain this viewpoint. He is now 42 years of age and, of course, does not wish to be in a position of passing the age limit of 45 without understanding that this will not interfere with his employment by the Company if he should not be placed before that time.

He came to our service as a stenographer immediately after he had finished his service and made good progress in his work. He is industrious, efficient, and has abilities far beyond the limit of his present occupation, or any that he has heretofore had.

In all these circumstances I strongly recommend:

(1) that effective as of June 1st, he be treated as a furloughed employe subject to reemployment; and

(2) that both in the interest of the Company, and as a matter of justice to Mr. Gerend, he be kept in sight and be given preferential opportunity to again join the Company's active service when any vacancy that he might fill presents itself.

I had intended to talk to you personally about Mr. Gerend before you left, but in the multiplicity of affairs failed to do so. But I believe this letter states the case, and will reach you on your return.

And I will appreciate very much indeed any consideration that may be given to Mr. Gerend.

Yours very truly,

Original signed

bcc—Mr. W. F. Bull:

PAUL SHOUP

Mr. Gerend's personal record attached for your files.

(R. 83)

**Appeals Council's Letter of May 26, 1954 to Mr. Gerend.**

May 26, 1954

Mr. Waldemar J. Gerend  
4669 Sequoyah Road  
Oakland 5, California

In reply refer to  
R.R.B. No. A-547382

Dear Sir:

Reference is made to your recent letters relative to your claim for benefits under the Railroad Retirement Act.

Before the Appeals Council can render a final decision in your case, it will be necessary to have the following additional information relative to the compensation of \$25.00 per month which you received from the Southern Pacific Company during the period from October 1926 to (sic) January 1938.

1. Did you perform service of any nature whatsoever for the Southern Pacific Company during this period? If so, explain, giving dates and types of services rendered.
2. Did you perform any services for Mr. Paul Shoup? If so, explain
  - a. Was the \$25.00 per month intended by Mr. Shoup as remuneration for such services?
  - b. Did Mr. Shoup pay you any compensation other than the money you received from the railroad company's pay roll?
3. What other employment did you have during the period from October 1926 to May 1938?

4. What reason was given by the Southern Pacific Company for dropping you from the pay roll beginning June 1938?
5. Did you protest the withholding of Railroad Retirement Taxing Act contributions during the year 1937 and until May 1938.
6. State exactly how much per month you received from the Southern Pacific Company during the period January 1932 through December 1936, and describe your duties during this specific period.
7. Please explain in full the reasons why, in your opinion, you received \$25.00 per month from the pay roll of the Southern Pacific Company during the period October 1926 through May 1938.

Very truly yours,

HALBERT W. DODD,

*Chairman, Appeals Council.*

HWD:fcc



(R. 84-86)

**Mr. Gerend's Reply to the Preceding Letter.**

4669 Sequoyah Road  
Oakland 5—May 29/54

Mr. H. W. Dodd, Chairman  
Appeals Council, USA Ret Bd  
Chicago, Ill.

Dear Sir:

Replying to your May 26 inquiry, reference RRB No. A-547382.

In an effort to clarify my relationship to the SP Co for 10/1/26 to 5/38 period I am enclosing

- (A) Letter sent to me by Paul Shoup on 6/8/38 and the enclosure referred to therein
- (B) Letter sent to me by A D McDonald on 1/19/39
- (C) My letter to Mr. McDonald on 5/24/40 and his reply of 5/27/40

Direct answer to your 7 queries is as follows:

(1)

To the best of my recollection I performed no service for SP Co during the period 10/1/26 to midyear 1932, when Mr. Shoup moved to New York. Thereafter, up to Mr. Shoup's retirement in 1938, I was given SP Co code books and occasionally performed errands for Mr. Shoup, relating to SP Co business, per his wire or letter request. After 1932, when Mr. Shoup was in SF, he visited my office to transact SP Co business. On the whole, however, the SP Co services were of a nominal character & largely consisted of delivering word from Mr. Shoup to business associates regarding political and legislative matters



(2)

I did perform services for Paul Shoup—devoting my entire time to such services. Review of my income tax reports throws the following light on my compensation from *all* sources:

1927	SP Co	300.00
	Paul Shoup and his wholly owned Los Altos Co	\$3750
	SP Motor Transport Co—Director Fees	\$ 50
	Total for year	\$4086
1928	SP Co	\$ 300.00
	Paul Shoup & Los Altos Co	3600.00
	Railroad Securities Co	300.00
	Total	<hr/> \$4200.00
1929	Same as 1928 or	\$4200.00
1930	SP Co	\$ 300.00
	Paul Shoup, Los Altos Co & RR Sec Co	4275.00
	Total	<hr/> \$4575.00
1931	SP Co	\$ 300.00
	Paul Shoup, Los Altos Co & RR Sec Co	45.00
	Total	<hr/> \$4800.00
1932	SP Co	\$ 270.00
	RR Security Co	270.00
	Paul Shoup & Los Altos Co	3570.00
	Total	<hr/> \$4110.00
1933	SP Co	\$ 270.00
	RR Sec Co	270.00
	Paul Shoup & Los Altos Co	3121.50
	Total	<hr/> \$3661.50

1934	SP Co	\$ 270.00
	RR Sec Co	270.00
	Paul Shoup & Los Altos Co	3334.00
	Total	<hr/> \$3874.00
1935	Not broken down	\$4020.00
1936	SP Co	\$ 300.00
	RR Sec Co	3270.00
	Paul Shoup & RR Associates	3666.49
	Total	<hr/> \$7236.49
1937	SP Co	\$ 300.00
	Paul Shoup	3276.00
	Total	<hr/> \$3576.00
1938	SP Co	\$ 125.00
	Paul Shoup	3355.00
	Total	<hr/> \$3480.00

(3)

My employment was solely on matters referred to me by Mr. Shoup

(4)

Abolishing of position

(5)

I did not protest withholding of RR Retirement Taxing Act Contributions from 1/1/37 to 5/38. I felt & still feel that the deduction was proper, but I do not feel services & compensation for period 10/1/26 to midyear 1932 were of a character to be used for computing RR Retirement benefits

(6)

This can be developed from the foregoing

(7)

Primarily as a retainer while on a special full time outside employment assigned by Mr. Shoup—and a gesture to maintain employment & relationship which would justify

Issuance of transportation

Continuance of Hospital membership

Continuance of Group Insurance

with the ultimate objective of being returned (or being eligible) to full time Railroad employment

Yours truly

/s/ W J GEREND

Waldemar J. Gerend

4669 Sequoyah Road

Oakland 5 Calif